

EXHIBIT 22

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Page 1

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE EASTERN DISTRICT OF VIRGINIA
4 ALEXANDRIA DIVISION

5 UNITED STATES,) 1:23-cv-00108-LMB-JFA
6 et al.,)
7)
8 Plaintiffs,)
9)
10 vs.)
11)
12 GOOGLE LLC,)
13)
14 Defendants.)
15)
16)

17 - HIGHLY CONFIDENTIAL -
18
19
20
21
22

23 VIDEOTAPED DEPOSITION OF
24 KODY SOUTH
25 August 31, 2023
26 9:06 a.m.

27 Reported by: Bonnie L. Russo
28 Job No. CS6074125

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	Page 2		Page 4
1	Videotaped Deposition of Koby South held at:	1	I N D E X
2		2	EXAMINATION OF KOBY SOUTH
3		3	BY MS. MORGAN
4		4	7
5		5	
6		6	
7	Paul Weiss Rifkind Wharton & Garrison, LLP	7	EXHIBITS
8	2001 K Street, N.W.	8	Exhibit 82 Solicitation/Contract/Order 75
9	Washington, D.C.	9	for Commercial Items
10		10	VET-AF-ADS-0000461239-287
11		11	Exhibit 83 E-Mail dated 6-16-21 151
12		12	VET-AF-ADS-0000-122732-742
13		13	
14		14	Exhibit 84 E-Mail dated 11-1-19 210
15		15	Attachment
16		16	VET-AF-ADS-0000126694-697
17		17	
18	Pursuant to Notice, when were present on behalf	18	Exhibit 85 E-Mail dated 6-13-22 227
19	of the respective parties:	19	Attachment
20		20	VET-AF-ADS-0000027906-909
21		21	
22		22	Exhibit 86 E-Mail dated 6-14-21 242
			Attachment
			VET-AF-ADS-0000027459-467
		Page 3	Page 5
1	APPEARANCES:	1	P R O C E E D I N G S
2	On behalf of the Plaintiffs:	2	(9:06 a.m.)
3	SEAN CARMAN, ESQUIRE	3	
4	VICTOR LIU, ESQUIRE	4	THE VIDEOGRAPHER: Good morning.
5	ALVIN CHU, ESQUIRE	5	We are going on the record at
6	KATHERINE E. CLEMONS, ESQUIRE	6	a.m. on August 31, 2023.
7	UNITED STATES DEPARTMENT OF JUSTICE	7	Please note that the microphones are
8	450 Fifth Street, N.W., Suite 700	8	sensitive and may pick up whispering and
9	Washington, D.C. 20530	9	private conversations. Please mute your phones
10	sean.carman@usdoj.gov	10	at this time.
11	victor.liu@usdoj.gov	11	Audio and video recording will
12	alvin.chu@usdoj.gov	12	continue to take place unless all parties agree
13	katherine.clemons@usdoj.gov	13	to go off the record.
14	On behalf of the Defendant:	14	This is Media Unit 1 of the
15	ERIN J. MORGAN, ESQUIRE	15	video-recorded deposition of Mr. Koby South in
16	PAUL, WEISS, RIFKIND,	16	the matter of United States, et al., versus
17	WHARTON & GARRISON, LLP	17	Google LLC filed in the United States District
18	1285 Avenue of the Americas	18	Court, Eastern District of Virginia, Alexandria
19	New York, New York 10019	19	Division. Case No. 1:23-cv-00108-LMB-JFA.
20	ejmorgan@paulweiss.com	20	My name is Orson Braithwaite
21	-and-	21	representing Veritext Legal Solutions. I am
22	HEATHER MILLIGAN, ESQUIRE	22	the videographer. The court reporter is Bonnie
	ANNELISE CORRIVEAU, ESQUIRE		
	MARTHA L. GOODMAN, ESQUIRE (Via Remote)		
	PAUL, WEISS, RIFKIND,		
	WHARTON & GARRISON, LLP		
	2001 K Street, N.W.		
	Washington, D.C. 20006		
	hmilligan@paulweiss.com		
	acorriveau@paulweiss.com		
	mgoodman@paulweiss.com		
	Also Present:		
	Orson Braithwaite, Videographer		
	Laura Reass, Department of Veterans Affairs		

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1 anything that you do in your job?	1 A. I don't think that that would be an
2 A. Yes.	2 accurate characterization of how the
3 Q. What kinds of things can they veto?	3 complicated federal procurement and approval
4 A. Anything related to external	4 bureaucracy operates, and it makes it sound,
5 communications to veterans.	5 like, I went, off we go. It's much more
6 Q. Why does the VA decide to -- well,	6 complicated.
7 do you have an understanding of why the VA	7 Q. Can you tell me about what your role
8 would decide to start an ad campaign?	8 was in starting Make a Connection?
9 A. I would be speculating. It varies	9 A. Yeah. I was a project manager so
10 greatly.	10 that -- helped develop a contract, helped
11 Q. Do you think that it's because the	11 review the proposals, helped review the
12 VA has a particular message or theme that it	12 research that -- under that, you know, as the
13 wants to communicate to the public or a segment	13 foundation of Make the Connection, the
14 of the public?	14 substantial public health research involved in
15 A. Again, I would be speculating	15 the campaign, helped to review and create the
16 because it varies greatly.	16 products associated with that campaign,
17 Q. Have you ever initiated an ad	17 including video production and social media and
18 campaign?	18 websites and all that, and manage those
19 A. I have started communication	19 deliverables with the contractor to make sure
20 programs for observance -- or campaigns where a	20 that, you know, the contract was successful.
21 paid media was part of the strategy of that	21 Q. The first thing you said was that
22 effort.	22 you helped develop a contract?
Page 59	Page 61
1 Q. Do you think that anything defined	1 A. Correct.
2 as an ad campaign necessarily incorporates paid	2 Q. What contract are you referring to?
3 media?	3 A. That was 12 years ago. That was a
4 MR. CARMAN: Objection. Form.	4 discrete Make the Connection campaign contract.
5 THE WITNESS: Hi.	5 Q. Uh-huh. Who was that contract with
6 MS. MORGAN: TikTok.	6 that you are -- that you're talking about?
7 THE WITNESS: Can you repeat the	7 MR. CARMAN: Objection. Form.
8 question?	8 THE WITNESS: It was Reingold.
9 BY MS. MORGAN:	9 BY MS. MORGAN:
10 Q. Yeah. I asked you if you had ever	10 Q. So it was a contract with Reingold
11 initiated an ad campaign, and you said I	11 to provide advertising-related services?
12 started communication programs for observing or	12 MR. CARMAN: Objection. Form.
13 campaigns where paid media was part of the	13 THE WITNESS: No.
14 strategy of that effort and I asked: Do you	14 BY MS. MORGAN:
15 think that anything defined as an ad campaign	15 Q. What was the contract for?
16 necessarily incorporates paid media.	16 A. The development of a national
17 MR. CARMAN: Objection to form.	17 anti-stigma campaign, communication campaign.
18 THE WITNESS: Personally, I would	18 Q. Did that include paid media?
19 say yes.	19 A. Yes.
20 BY MS. MORGAN:	20 Q. You said I think, that the contract
21 Q. Did you initiate the ad campaign for	21 was for a limited discrete Make the Connection
22 Make a Connection [sic]?	22 campaign -- you said it was a discrete Make the

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1 Connection campaign contract.	1 who are program managers. Paid media happens
2 What did you mean when you said it	2 differently.
3 was a "discrete contract"?	3 Q. How does paid media happen?
4 MR. CARMAN: Objection to form.	4 A. In our office only, paid media is
5 BY MS. MORGAN:	5 generally given to us to use based off of
6 Q. What did you mean by -- when you	6 lag -- what is called "lag funding," funding
7 said "that was a discrete Make the Connection	7 that programs within our office, the
8 contract"?	8 Office of Mental Health and Suicide Prevention,
9 A. It was focused exclusively on	9 have not used during the course of a fiscal
10 developing Make the Connection.	10 year. So it's kind of like leftovers. So we
11 Q. Do you have any recollection of what	11 don't get a specific paid media budget per year
12 the term was for that contract?	12 at the beginning of each fiscal year.
13 A. I'm pretty sure, but I would not --	13 Q. At the beginning of that answer, you
14 it has been a while. Pretty sure it was	14 said in our office only.
15 something like a base of one year with option	15 Based on your 13 years at the VA, do
16 periods, for -- which would have been for one	16 you have any understanding of how budgeting for
17 year. And those are typically not to exceed	17 paid media works in other offices?
18 five years.	18 A. I do not.
19 Q. As part of your role in Make a	19 Q. In the time that you were working in
20 Connection, did you set a budget for Reingold's	20 the Office of Governmental Affairs --
21 work on that project?	21 A. Public and Intergovernmental
22 MR. CARMAN: Objection to form.	22 Affairs.
Page 63	Page 65
1 THE WITNESS: No.	1 Q. Public and Intergovernmental
2 BY MS. MORGAN:	2 Affairs, did you learn anything about how other
3 Q. Do ad campaigns typically have	3 offices budget for paid media?
4 budgets?	4 A. Oh, no.
5 A. I would say that that would be a	5 (Interruption.)
6 requirement. Like, you couldn't buy ads	6 (Discussion off the stenographic
7 without money.	7 record.)
8 Q. Who sets the budget for a contract	8 THE VIDEOGRAPHER: The time is
9 with Reingold?	9 a.m. This begins Unit No. 2. We are on the
10 A. So it varies and it depends because	10 record.
11 I -- when I answer that question, I am not	11 BY MS. MORGAN:
12 referring exclusively to paid media. So,	12 Q. Welcome back, Mr. South.
13 again, it -- these are large, national outreach	13 A. Thanks.
14 campaigns that include a ton of development,	14 Q. Before we went on our break in the
15 content creation, website design, video	15 middle of a question, I spilled water all over
16 production that could be -- that could exclude	16 the table and we had to go off the record to
17 paid media and continue to operate.	17 make sure that the court reporter's equipment
18 Most of the time, those budgets what	18 was okay.
19 we would consider in our office labor hours to	19 So I am going to go back -- which I
20 support a website, social media developed that	20 think the record reflects that you said, oh, no
21 just gets posted organically, et cetera, those	21 in response to that. I'm going to go back to
22 budgets are established by my colleague and I	22 the question because I don't think you meant to

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1 say, oh, no in response to my question, or at 2 least I haven't found out yet if that is what 3 you meant to say. Is that okay? 4 A. Yes. 5 Q. Okay. So my question was: In the 6 time that you were working in the Office of 7 Public and Intergovernmental Affairs, did you 8 learn any information about or anything about 9 how other offices budget for paid media? 10 A. No. 11 Q. You said when you were testifying 12 about the Reingold -- the first Reingold 13 contract in connection with Make the Connection 14 that you thought it was a term of one year with 15 an ability to renew for up to five years. 16 Do you remember that? 17 A. Yes. 18 Q. After five years if the Office of 19 Mental Health and Suicide Prevention wanted to 20 continue to use Reingold's services, would it 21 have to solicit bids again? 22 MR. CARMAN: Objection. Form.	1 and RFP? 2 MR. CARMAN: Objection. Form. 3 THE WITNESS: I am not aware of an 4 instance where there has ever been, that I have 5 been involved in, a discrete RFP posted for 6 paid media. 7 BY MS. MORGAN: 8 Q. What RFP would result in the Office 9 of Mental Health and Suicide Prevention hiring 10 Reingold -- 11 MR. CARMAN: Objection. Form. 12 BY MS. MORGAN: 13 Q. -- or accepting a bid from Reingold, 14 I guess? 15 MR. CARMAN: Same objection. 16 THE WITNESS: Can you -- 17 BY MS. MORGAN: 18 Q. Yeah. So when you said I'm not 19 aware of an instance where -- I'm not aware of 20 an instance where there has ever been -- that I 21 have been involved in a discrete RFP posted for 22 paid media --
Page 67	Page 69
1 THE WITNESS: Yes. 2 BY MS. MORGAN: 3 Q. When the Office of Mental Health and 4 Suicide Prevention solicits bids from 5 contractors, how does it do that? 6 A. The short answer is request for bids 7 are posted on an electronic service today. You 8 know, the last few years or I don't know a 9 decades or so, it has become more electronic on 10 a -- on a public-facing website where all 11 government contracts are posted and gives, you 12 know, the contract -- the solicitation, not 13 contract. The solicitation is put up on 14 this -- FedBizOpps is the name of the website. 15 I think they may have changed the name 16 recently, though. You can Google FedBizOpps. 17 Yeah, and so all government 18 contracts are put up there for our 19 solicitations, RFPs, RFIs, RFQs for entities to 20 bid on. 21 Q. Is a request for a bid to provide 22 media planning services like the Reingold bid	1 A. Uh-huh. 2 Q. -- I am just trying to understand 3 what is posted to solicit bids for the kind of 4 work that Reingold bid on and for Make the 5 Connection. 6 MR. CARMAN: Objection. Form. 7 THE WITNESS: Specifically for Make 8 the Connection, it would be an RFP requesting a 9 proposal to support. Make the Connection is a 10 large, national outreach campaign that may or 11 may not include paid media as an element of the 12 overall campaign. 13 BY MS. MORGAN: 14 Q. If you received multiple bids for an 15 RFP, who evaluates that at the Office of Mental 16 Health and Suicide Prevention? 17 MR. CARMAN: Objection. Foundation. 18 BY MS. MORGAN: 19 Q. Does someone in the Office of Mental 20 Health and Suicide Prevention evaluate bids for 21 work that is going to be performed for that 22 office?

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1	BY MS. MORGAN:		
2	Q. Is it a --	1	is a chart that says: "Calls, texts, and chats
3	A. Promoting that service is part of	2	by source from paid efforts."
4	communication outreach strategy for that	3	Do you see that?
5	program.	4	A. I do.
6	Q. Does this service fall within the	5	Q. Do you know what the sources are
7	Office of Mental Health and Suicide Prevention?	6	that are referred to here?
8	A. Yes.	7	A. I do other than one column. I'm
9	Q. Okay. Are communications related to	8	actually not sure what that -- that one refers
10	that service on the mental health side of the	9	to.
11	Office of Mental Health and Suicide Prevention,	10	Q. Do you know what Google Ads refers
12	or are they on the suicide side?	11	to?
13	A. Suicide side.	12	A. Yes.
14	Q. So this is, again, outside of the	13	Q. What does that refer to?
15	scope of your typical remit inside mental	14	A. Key word ads that would appear at
16	health-specific initiatives. Am I getting that	15	the top of the page.
17	right?	16	Q. Does that include display ads?
18	A. Yes.	17	MR. CARMAN: Objection. Foundation.
19	Q. And that's what you meant when you	18	Form.
20	said "it was in your capacity as a volunteer"?	19	THE WITNESS: To the best of my
21	A. Correct --	20	knowledge during this period of time, I'm not
22	MR. CARMAN: Objection to the	21	sure that that did include display ads.
		22	BY MS. MORGAN:
			Page 233
1	characterization of the earlier testimony.	1	Q. Do you know if the -- these are ads
2	But you can answer.	2	that are bought through a Google service called
3	THE WITNESS: Yeah, that's -- that's	3	Google Ads?
4	mostly correct, yes.	4	MR. CARMAN: Objection. Form.
5	BY MS. MORGAN:	5	Foundation.
6	Q. It says: "Call, text, chat volume	6	THE WITNESS: I would not know that.
7	from paid media." Do you understand what this	7	BY MS. MORGAN:
8	report is showing about call, text, and chat	8	Q. Next to that it says: "FB
9	volume from paid media?	9	click-to-call."
10	A. Yes, mostly.	10	Do you see that?
11	Q. What is it showing?	11	A. Yes.
12	A. It appears to be showing volume of	12	Q. Do you know what FB click-to-call
13	calls, texts, and chats over a course of two	13	is?
14	weeks associated with paid media.	14	A. Facebook.
15	Q. Are the calls, texts, and chats all	15	Q. Next to that it says: "On-site
16	going to the Veterans Crisis Line to the best	16	calls."
17	of your knowledge?	17	Do you know what that is?
18	MR. CARMAN: Objection. Foundation.	18	A. Actually, I don't know what that one
19	THE WITNESS: This only shows those	19	is either, no.
20	calls, texts, and chats to that number only.	20	Q. Okay. And what about the one next
21	BY MS. MORGAN:	21	to that? I think it says: "HID calls."
22	Q. On the right side of the page, there	22	Do you know what that is?

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1 A. No. That might be high display 2 maybe, but that doesn't sound right, so I'm 3 guessing.	1 the Veterans Crisis Line, we have to keep the 2 calls and the texts -- mostly to calls, but 3 texts and chats take up a pretty significant 4 amount of responders' time to an -- to an 5 approximate, you know, number which you see 6 there at the bottom right. We try to stay 7 under 5,000, and that's why that number is 8 under 5,000 consistently when it comes to 9 calls.
4 Q. Do you know how frequently these 5 daily volume and spend reports are generated?	10 So the volume -- the source of 11 traffic helps us ensure that we're not driving 12 too much traffic. It's sort of a challenge. 13 This is a special case.
6 MR. CARMAN: Objection. Form.	14 BY MS. MORGAN:
7 THE WITNESS: Yeah. Right now? No.	15 Q. Does the Office of Mental Health and 16 Suicide Prevention make decisions based on the 17 performance of these sources about how to 18 allocate resources?
8 BY MS. MORGAN:	19 MR. CARMAN: Objection. Form.
9 Q. Did you know -- do you know how 10 frequently they were generated at the time that 11 you were the recipient of this in 2022?	20 Foundation.
12 A. To the best of my recollection, I 13 think it was every two weeks.	21 THE WITNESS: This evidence you are 22 providing here is a very special case, but
14 Q. Why would the Office of Mental 15 Health and Suicide Prevention be interested in 16 tracking calls, texts, and chats by source from 17 paid efforts?	
18 MR. CARMAN: Objection. Form.	
19 Foundation.	
20 THE WITNESS: Under the Veterans 21 Crisis Line, you have a limited number of 22 responders, unfortunately. And so paid	
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1 efforts, while you want to do your best to get 2 them in front of relevant veteran callers, 3 it's -- you know, you can't -- it's almost 4 impossible to serve an ad to somebody you know 5 definitively is a veteran. You do your best 6 with, you know, affinities and groups and stuff 7 like that, but it has to be -- you want to get 8 this service in front of veterans that need it.	1 regardless, this evidence here is used to make 2 business decisions relating to paid media to 3 ensure that the Veterans Crisis Line isn't 4 overwhelmed and that veterans in need -- 5 because when you open your aperture on 6 advertising and you start driving nonrelevant 7 calls to the crisis line, they might be 8 suicidal people and the Veterans Crisis Line 9 will help them. But as it starts to get 10 overwhelmed on paid ads, people start getting 11 put on hold, people start, you know, getting 12 bounced to other places. So in this case, it's 13 used for a very specific case.
9 But it has to be very tightly 10 managed because there is a capacity at the 11 Veterans Crisis Line. Once the capacity of 12 responders is reached, it rolls over to 13 SAMHSA's National Suicide Prevention Lifeline, 14 but again, that's not the Veterans Crisis Line. 15 You don't want to put people on hold. You 16 don't want the phone ringing three or four 17 times.	14 In other cases it would likely be 15 used for something else, but it would still 16 be -- the sources of traffic would still be 17 very relevant data that people in my role would 18 want to see.
18 So you need to look at the sources 19 of -- of traffic to make sure for some 20 reason -- because sometimes, you know, some ad 21 you put out there just outperforms your 22 expectations grossly. And in situations like	19 BY MS. MORGAN:
	20 Q. When you say "in other cases it 21 would likely be used for something else," what 22 other cases are you referring to?

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<p>1 A. First, I wouldn't -- I'm not 2 necessarily saying these specific types of 3 data, but the data that we collect relating to 4 paid media would be used to make business 5 decisions.</p> <p>6 In this specific case, they're used 7 to ensure that call volume aligns with the 8 capacity of the Veterans Crisis Line.</p> <p>9 Q. When you say that in other cases 10 data you collect relating to paid media would 11 be used to make business decisions, what do you 12 mean?</p> <p>13 A. Allocation of funds for different 14 sources of paid media, and in a separate case 15 outside of this when you're trying to drive 16 volume based on your key performance 17 indicators, you would look at a source that was 18 outperforming and you would want to know why 19 and you might invest more money in that if it's 20 driving the sorts of traffic that you want, 21 right.</p> <p>22 It's not like you're going to go,</p>	<p>1 A. Yes. 2 Q. Okay. And Facebook click-to-call 3 next to that has a total of 413 calls, texts, 4 and chats by source. 5 Do you see that? 6 MR. CARMAN: Object to form. 7 THE WITNESS: Yes. 8 BY MS. MORGAN: 9 Q. My understanding is that in the 10 context of this monitoring what the Office of 11 Mental Health and Suicide Prevention is trying 12 to do is to manage the number of calls, texts, 13 and chats by source to ensure that they stay 14 within the 5,000 that the Office of Mental 15 Health and Suicide Prevention Veterans Crisis 16 Line can serve; is that right? 17 MR. CARMAN: Objection. Form. 18 THE WITNESS: I would just clarify 19 that to be per day. 20 BY MS. MORGAN: 21 Q. Per -- okay. 5,000 per day? 22 A. Yes.</p>
<p>1 oh, it's driving too much volume. We need to 2 reduce those ads because we're overwhelming the 3 crisis line. You would actually in many 4 instances might increase the ads related to 5 that. You might want to keep using something 6 that's driving that high volume.</p> <p>7 Q. So, for example, in this document, 8 Google ad -- based on that chart we were 9 looking at, Google Ads?</p> <p>10 MR. CARMAN: Can you specify which 11 chart.</p> <p>12 MS. MORGAN: Yeah. The chart that 13 says: "Calls, texts, and chats by source from 14 paid efforts." It's on the page that's 15 Bates-stamped VET-AF-ADS-000027907.</p> <p>16 MR. CARMAN: Okay. Got it. Thanks.</p> <p>17 BY MS. MORGAN:</p> <p>18 Q. Okay. So based on this chart if you 19 look at the grand total at the bottom, Google 20 Ads has a total of 145 call, text, and chats by 21 source.</p> <p>22 Do you see that?</p>	<p>1 Q. Okay. But if this was a different 2 type of media report and you saw Facebook 3 click-to-call significantly outperforming 4 Google Ads like how it is in this chart, would 5 you potentially make a business decision about 6 how much to invest in Google Ads versus how 7 much to invest in Facebook click-to-call? 8 MR. CARMAN: Objection. Form. 9 Foundation.</p> <p>10 THE WITNESS: I don't recall a 11 specific instance of that --</p> <p>12 BY MS. MORGAN:</p> <p>13 Q. Okay.</p> <p>14 A. -- I will say yes, but I don't 15 recall.</p> <p>16 Q. Let's look at another document. Do 17 one more document, and then we can take another 18 break.</p> <p>19 A. Sure. I mean, if you want to power 20 through --</p> <p>21 Q. Are you okay?</p> <p>22 A. Yeah. No. I'm good.</p>

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1 to untangle," what do you mean?	1 say that again.
2 MR. CARMAN: Objection. Form.	2 BY MS. MORGAN:
3 Foundation.	3 Q. Yeah. Outside of conversations with
4 THE WITNESS: My understanding has	4 lawyers, do you have an understanding of when
5 been influenced -- not influenced, that's	5 the Department of Veterans Affairs got involved
6 shitty -- sorry. Don't do that. It's -- can	6 in this litigation?
7 you repeat the question, please.	7 A. No.
8 BY MS. MORGAN:	8 Q. To the best of your knowledge, who
9 Q. You said -- I asked you: Outside of	9 made the decision for the Department of
10 conversations you have had with lawyers, do you	10 Veterans Affairs to participate in this
11 have an independent understanding of what the	11 lawsuit?
12 Department of Veterans Affairs' role is in this	12 MR. CARMAN: So I object. Calls for
13 lawsuit.	13 attorney-client privileged information.
14 You said it would be very difficult	14 You can answer if you know, from
15 to untangle at this point, and I said what you	15 outside of any conversations with any lawyers,
16 -- when you said "difficult to untangle," what	16 who made the decision.
17 do you mean?	17 THE WITNESS: I don't know.
18 MR. CARMAN: And I want to object.	18 BY MS. MORGAN:
19 Asked and answered, I think the previous	19 Q. Was your answer qualified by your
20 answer.	20 counsel's instruction? My question is -- is:
21 THE WITNESS: Considering I did not	21 Do you not know who got -- who got the
22 know what this lawsuit was about prior to	22 Department of Veterans Affairs involved in the
Page 275	Page 277
1 March, I would -- are you asking me if I do	1 lawsuit, or do you not know outside of
2 now, based on the information that I have at my	2 conversations with lawyers?
3 disposal or are you asking me --	3 A. I -- I don't know outside of my
4 BY MS. MORGAN:	4 conversations with lawyers.
5 Q. I am just asking if -- I think you	5 MS. MORGAN: Is it your position
6 have answered the question which is that you --	6 that that fact is privileged?
7 your understanding postdates March of 20 -- is	7 MR. CARMAN: Which fact?
8 from March of 2023 or after, and so you can't	8 MS. MORGAN: The fact of who at the
9 answer without revealing communications with	9 Department of Veterans Affairs made the
10 lawyers; is that right?	10 decision to get involved in this lawsuit?
11 A. That is right.	11 MR. CARMAN: That fact is
12 Q. Okay. Do you -- do you have an	12 privileged, if he learned it from conversations
13 understanding from outside of conversations	13 with lawyers, yes.
14 with lawyers, of when the Department of	14 MS. MORGAN: Is it your position
15 Veterans Affairs got involved in this	15 that it's legal advice?
16 litigation?	16 MR. CARMAN: I don't think the
17 MR. CARMAN: Again, I object,	17 Department of Justice is going to take a
18 attorney-client, and instruct you in answering,	18 position in this deposition as to all the
19 don't disclose any conversations or the	19 possible arguments we can make, but I think
20 substance of conversations with counsel from VA	20 it's a fair objection that it calls for
21 or DOJ.	21 attorney-client privilege.
22 THE WITNESS: I apologize. Will you	22 BY MS. MORGAN:

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1 Q. Have you discussed the lawsuit -- 2 the Department of Justice's lawsuit against 3 Google with anyone outside of lawyers? 4 A. We discussed that this morning. 5 Q. Who did you discuss it with, outside 6 of lawyers? 7 A. My colleague, Mr. Rhett Herrera, and 8 as I mentioned this morning, very briefly at 9 the initiation of this, it was mentioned in 10 passing in normal business meetings to our 11 contractor.	1 demonstrate that Google has charged the 2 government more than it should? 3 MR. CARMAN: Object to form and 4 foundation. 5 THE WITNESS: Without refunding it 6 after the case? 7 BY MS. MORGAN: 8 Q. Yes. 9 A. No. 10 Q. Do you have any specific reason to 11 think that Google has charged the Department of 12 Veterans Affairs more than it should for 13 digital advertising?
12 Q. Are you familiar with the term "open 13 web display advertising"? 14 A. Not really, no. 15 Q. Do you have any understanding of 16 what "open web display advertising" is? 17 A. No. 18 Q. Have you heard the term "open web 19 display advertising"? 20 A. I cannot recall. 21 Q. Has Google caused the Department of 22 Veterans Affairs to pay more for digital	14 MR. CARMAN: Object to form and 15 foundation. 16 Let me also -- sorry. Let me 17 caution you in answering, not to disclose 18 conversations with counsel from VA or DOJ. 19 THE WITNESS: In a broad sense of 20 what Google does on a normal day-to-day, pretty 21 likely from a personal standpoint to think that 22 Google is probably overcharging pretty much
1 advertising than was necessary? 2 MR. CARMAN: Objection. Form. 3 Foundation. 4 THE WITNESS: Probably. But do I 5 have a certificate that has been notarized by a 6 notary public? No. 7 BY MS. MORGAN: 8 Q. Do you have any specific -- 9 A. I mean, we've received refunds 10 before, so that seems to be overcharging. 11 Q. When you receive the refund, isn't 12 that fixing the overcharge? 13 A. It sure is, but I assume -- again, I 14 don't have -- I have no, you know, there is -- 15 you are asking me to guess, because you didn't 16 stipulate whether I have business documents 17 that demonstrate that Google has charged the 18 United States Government more than it should. 19 Q. Do you have business documents? 20 A. I do not. 21 Q. Let me finish the question. 22 Do you have business documents that	1 everybody that purchases ads from it. 2 BY MS. MORGAN: 3 Q. Do you have a specific reason to 4 think that? 5 A. No. 6 Q. Did anyone at Reingold ever tell you 7 that Google was causing the Department of 8 Veterans Affairs to pay more for digital 9 advertising? 10 MR. CARMAN: Object to form and 11 foundation. 12 THE WITNESS: Not that I recall. 13 BY MS. MORGAN: 14 Q. Sitting here today, do you have 15 concerns that Google has harmed the Department 16 of Veterans Affairs? 17 MR. CARMAN: Objection. Form. 18 Foundation. 19 THE WITNESS: Significantly no, but 20 yes. 21 BY MS. MORGAN: 22 Q. When you say "significantly no,"

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1 what do you mean?	1 MR. CARMAN: Objection. Lack of
2 A. Saying has it damaged the Department	2 form and lack of foundation.
3 of Veterans Affairs is a pretty broad	3 THE WITNESS: Probably a bad
4 statement.	4 example. We don't advertise with Amazon.
5 Q. In what way do you think that Google	5 BY MS. MORGAN:
6 has harmed the Department of Veterans Affairs?	6 Q. Do you have a view on whether
7 MR. CARMAN: So again, I want to	7 Facebook has harmed the Department of Veterans
8 just object to the question to the extent that	8 Affairs?
9 it calls for disclosure of the substance of	9 MR. CARMAN: Objection. Form. Lack
10 attorney-client communication or attorney work	10 of foundation.
11 product and caution you, in your answer, don't	11 THE WITNESS: I -- without direct
12 disclose the substance of any conversations	12 evidence, I think that Facebook, for its very
13 with counsel for VA or DOJ, and don't disclose	13 specific intended purpose of being a social
14 any -- anything that would reveal the thoughts	14 media platform has, over the course of its
15 or mental impressions of the attorneys that you	15 business development, and Make the Connection
16 have talked to in this case.	16 has had a Facebook campaign since -- or an
17 THE WITNESS: You referenced	17 account since 2011, has made it increasingly
18 specifically sitting here today. I would	18 more difficult to reach the fans of your
19 imagine this whole spectacle wouldn't be going	19 account without using paid media.
20 on unless there was a reason for it.	20 Therefore, they have made it more
21 And I -- my personal opinion based	21 expensive to reach those people, and in some
22 on this spectacle, but no evidence, but being a	22 very indirect intangible way, and also tweaking
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1 consumer and citizen of the United States of	1 their algorithm all the time, have likely made
2 America and knowing the practices of Google in	2 it harder to reach veterans, which again,
3 a broad sense, having lived in this country for	3 indirectly, could have some damage to the
4 46 years, is that Google has likely overcharged	4 Department of Veterans Affairs, but that is a
5 many advertisers when it comes to advertising,	5 social media platform.
6 and since I am in the advertising business, it	6 BY MS. MORGAN:
7 is likely that the Department of Veterans	7 Q. We saw in documents earlier today,
8 Affairs, over the course of some business or	8 that the Department of Mental Health and
9 campaign, has been overcharged and not	9 Suicide Prevention has utilized Microsoft Bing
10 reimbursed. I do not have direct evidence of	10 in its advertising campaigns.
11 that.	11 Do you remember that?
12 THE VIDEOGRAPHER: Mr. South, bring	12 Do you have a view as to whether
13 your microphone up.	13 Microsoft has in some sense harmed the
14 BY MS. MORGAN:	14 Department of Veterans Affairs?
15 Q. I asked you about whether you think	15 MR. CARMAN: Objection. Form and
16 Google has harmed the Department of Veterans	16 lack of foundation.
17 Affairs.	17 THE WITNESS: I haven't heard much
18 In some of your earlier answers, you	18 about Bing. It doesn't get used very often.
19 referenced other platforms like Amazon, or -- I	19 Its market share of search is, you know, in the
20 think you said Twitter or Facebook.	20 single percentages probably. I don't know. I
21 Do you have a view on whether Amazon	21 think it's behind Yahoo.
22 has harmed the Department of Veterans Affairs?	22 I can't recall ever having

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1 THE WITNESS: Yeah, I am 2 generalizing that I think most record retention 3 policies are somewhere in the neighborhood of 4 seven years. That would include most records. 5 I highly doubt that they are deleting patient 6 records every seven years though, but most 7 business operational documents I think are 8 seven years.	1 (Whereupon, the proceeding was 2 concluded at 4:08 p.m.) 3 4 5 6 7 8 9
9 BY MS. MORGAN:	9
10 Q. Do you use any kind of chat platform 11 to communicate at work?	10 11
12 A. We use Teams, yes.	12
13 Q. And you use the chat function inside 14 Teams?	13 14
15 A. Yes.	15
16 MS. MORGAN: Okay. I think we can 17 go off the record. I think I am done on the 18 30(b)(1), but I want to just talk to my team.	16 17 18
19 Does anyone object to taking a 20 break?	19 20
21 MR. CARMAN: No.	21
22 THE VIDEOGRAPHER: The time is	22
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1 p.m. This ends Unit 5. Off the record. 2 (A short recess was taken.) 3 THE VIDEOGRAPHER: The time is 4 -- 4:08 p.m. We are on the record. 5 MS. MORGAN: Mr. South, I am not 6 going to have further questions for you as a 7 fact witness. 8 And before we go off the record in 9 this deposition, I do want to just reserve 10 rights -- my understanding is that last night 11 the Department of Justice informed Google that 12 there were some -- like several thousand 13 documents of Mr. South's that had not been 14 produced yet. We proceeded with the deposition 15 anyways. It was scheduled. I'll just reserve 16 the right to reopen the deposition should that 17 become necessary when we look at the documents. 18 And I have no further questions on 19 this -- in this deposition. 20 MR. CARMAN: We have no questions. 21 THE VIDEOGRAPHER: The time is 22 p.m. We are off the record.	1 CERTIFICATE OF NOTARY PUBLIC 2 I, Bonnie L. Russo, the officer before 3 whom the foregoing deposition was taken, do 4 hereby certify that the witness whose testimony 5 appears in the foregoing deposition was duly 6 sworn by me; that the testimony of said witness 7 was taken by me in shorthand and thereafter 8 reduced to computerized transcription under my 9 direction; that said deposition is a true 10 record of the testimony given by said witness; 11 that I am neither counsel for, related to, nor 12 employed by any of the parties to the action in 13 which this deposition was taken; and further, 14 that I am not a relative or employee of any 15 attorney or counsel employed by the parties 16 hereto, nor financially or otherwise interested 17 in the outcome of the action. 18 <i>Bonnie L. Russo</i> _____ Notary Public in and for the District of Columbia My Commission expires: August 14, 2025.

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